FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5718 OF 2005
WITH
WRIT PETITON NO. 5719 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Coram, : Court's or Judge's Orders : .

Mr. S. N. Chandrachood for petitioner

Mr. P.K. Dhakephalkar for respondents

CORAM: SMT. RANJANA DESAI, J.
8/9/2005

P.C.:-

The petitioner in both these petitions is original defendant 1 in Regular Civil Suit Nos. 27/04 and 29/04. One of these suits pertains to the land and ground floor and the other pertains to first floor of the suit property. The plaintiff has prayed for a declaration that he is a lawful owner of the suit property and defendant 1 has no right, title and interest in the suit property and for an injunction restraining defendant 1 from executing the decree passed in

2. In this suit the plaintiff filed an application for amendment of the plaint. By the amendment the plaintif wants to add certain additional facts and insert the prayer of restoration of vacant and peaceful possession of the suit property in place of recovery of possession of the suit property. By the impugned orders the trial court has allowed the chamber summons on payment of cost of Rs.300/- and hence this writ petition.

3. I have heard the learned counsel appearing for the petitioner. He contended that the trial court erred in allowing the amendment application. He submitted that the amendment sought to be introduced is barred by limitation. He further submitted that the suit as it was filed was not falling in the pecuniary jurisdiction of the trial court and by introducing the amendment the plaintiff wants to bring it within the

pecuniary jurisdiction of the trial court. The learned counsel further pointed out that whereas earlier the plaintiff had prayed for recovery of possession now he is seeking restoration of possession.

4. The learned counsel further contended that when the relevant judgments were cited the trial court wrongly observed that all these judgments would be considered at the final hearing of the suit. In the circumstances he submitted that the trial court erred in allowing the chamber summons.

5. In my opinion no interference is necessary with the impugned order. The present amendment application is a pretrial amendment application. The respondents are third parties who claim to have purchased the suit property. The points of limitation, and jurisdiction could be made the subject matter of issues and could be decided at the final hearing of the suit. Amendment of the prayer clause

does not change the basic facts of the suit. Besides the petitioner can by filing additional written statement deal with all these points. In my opinion, the amendment does not introduce a new cause of action. It merely seeks to introduce certain additional facts.

6. In the circumstances no interference is necessary with the impugned order. All the points could be the subject matter of issues. Petitioner will be at liberty to advance all his contentions.

7. Keeping all contensions of both sides open, the writ petitions are rejected.

8. Authenticated copy be provided.